



Matthew Rodriguez
Secretary for
Environmental Protection



Department of Toxic Substances Control

Miriam Barcellona Ingenito
Acting Director
700 Heinz Avenue
Berkeley, California 94710-2721



Edmund G. Brown Jr.
Governor

October 13, 2014

CERTIFIED MAIL

Ms. Ingrid Brostrom
Center on Race, Poverty & the Environment
1999 Harrison Street, Suite 650
Oakland, California 94612

ORDER DENYING PETITION FOR REVIEW OF PERMIT MODIFICATION DECISION
FOR CHEMICAL WASTE MANAGEMENT, INC., KETTLEMAN HILLS FACILITY,
KINGS COUNTY, CALIFORNIA, EPA ID. NO. CAT000646117

Dear Ms. Brostrom:

The Department of Toxic Substances Control (DTSC) has completed analysis of your petition for review (appeal), dated June 23, 2014, of the permit modification decision issued by DTSC on May 21, 2014, for the Kettleman Hills Facility. For the reasons set forth in the attached Order, Docket Number PAT-FY14/15-02. I am denying your petition for review and lifting the stay of the permit modification decision. The Order constitutes DTSC's final permit decision and is effective as of the date of this letter.

If you have any further appeal procedural questions, please contact me at Barbara.cook@dtsc.ca.gov or email us at appeals@dtsc.ca.gov.

Sincerely,

Barbara J. Cook, P.E.
Permit Appeals Officer

Attachment

CERTIFIED MAIL NO.: 7012 0470 0000 6670 1322

cc: See next page

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cc: Mr. Wayne Lorentzen, P.E.
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STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:) Docket No.: PAT-FY14/15-02
)
CHEMICAL WASTE MANAGEMENT,) ORDER DENYING PETITION FOR
INC., KETTLEMAN HILLS FACILITY) REVIEW
35251 Old Skyline Road)
Kettleman City, California) California Code of Regulations,
) Title 22, Section 66271.18(c)
EPA Id. No.: CAT 000 646 117

I. INTRODUCTION

On May 21, 2014, the Department of Toxic Substances Control (DTSC) issued a Hazardous Waste Facility Permit decision approving a Class 3 permit modification (Permit) for the Chemical Waste Management, Inc. (CWM), Kettleman Hills Facility (KHF or Facility). The Facility is located at 35251 Old Skyline Road, Kettleman City, California.

On June 23, 2014, Ms. Ingrid Brostrom, Senior Attorney, Center on Race, Poverty & the Environment, also on behalf of El Pueblo para el Aire y Agua Limpio (Petitioners), filed a Petition for Review¹ (Appeal or Petition).

Pursuant to California Code of Regulations, title 22, section 66271.14, subdivision (b)(2), the Permit decision has been stayed pending determination whether the Appeal meets the criteria for granting a review. In the interim, CWM continues to be authorized to operate the Facility under the terms and conditions of its Hazardous Waste Facility Permit 02-SAC-03 issued with an effective date of June 16, 2003, as modified March 5, 2009.

¹ The El Pueblo Petition filed with DTSC contained a 72 page Petition and Appendices. An e-mail was sent to Ms. Brostrom on June 25, 2014 describing the Appendices received. The Appendices missing from the submittal were Appendices A, E, F, and Q. The missing documents have not been submitted.

II. JURISDICTION

The Department has jurisdiction over hazardous waste facility permits and the imposition of conditions on such permits pursuant to the California Health and Safety Code, sections 25200 et seq. and 25186.1(b)(1) and California Code of Regulations, title 22, sections 66270.30 and 66271.18.

On July 23, 1992, the State of California received final authorization under section 3006(b) of the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), 42 U.S.C. section 6926(b), to operate its hazardous waste program in lieu of the federal program (57 Fed. Reg. 32, 726 (July 23, 1992)). As a RCRA-authorized state, California has the authority to issue, modify, and administer RCRA-equivalent permits.

III. BACKGROUND

A. FACILITY DESCRIPTION:

The Facility is described in the modified Hazardous Waste Facility Permit, dated May 21, 2014, as follows:

"The Chemical Waste Management, Inc. Kettleman Hills Facility is a commercial hazardous waste treatment, storage and disposal facility. The Facility contains 1600 contiguous acres, approximately 696.5 of which have been approved for hazardous waste activity. The Facility accepts solid, semi-solid, and liquid hazardous and extremely hazardous wastes. It may not accept Class 1, Division 1.1 or 1.2, or forbidden explosives (Code of Federal Regulations, title 49, subchapter C, part 173, section 50); compressed gas cylinders (excluding aerosol cans); radioactive waste that is not exempt from regulation and licensing or is not expressly authorized for disposal under the Radiation Control Law, chapter 8 (commencing with section 114960) of part 9 of division 104 of the Health and Safety Code, or any successor statute that may replace the Radiation Control Law, or is prohibited from disposal under article 1 (commencing with section 114705) of chapter 5 of part 9 of division 104 of the Health and Safety Code or any successor statute that may replace article 1, or is prohibited from disposal by any government agency; biological agents or infectious wastes. The Facility also has a permit, issued by the California Integrated Waste Management Board), to receive municipal/solid wastes into the converted landfill Unit B-19. The Facility conducts the following activities: solar

1 evaporation in three surface impoundments; disposal into one hazardous
2 waste landfill; PCB draining and flushing; PCB disposal and storage; and
3 stabilization, solidification and storage of bulk and drummed wastes. The
4 Facility is also permitted to construct and operate a neutralization/filtration
unit and eight one-million gallon above ground evaporation tanks."

5 **B. PERMIT DECISION**

6 On December 12, 2008, CWM submitted a permit modification request to allow
7 CWM to increase the footprint of Landfill B-18 from 53 to 67 acres, increase the total
8 capacity of B-18 from 10,700,000 to 15,600,000 cubic yards, increase the maximum
9 elevation of B-18 from 965 to 1018 feet above mean sea level, add a second surface
10 water run-off containment basin, extend the side slope liner system with a 3-foot clay
11 thickness for the secondary composite liner, and alter of the final closure configuration
12 to include 25-foot wide benches at a maximum vertical interval of 50 feet with a 3.5H:1V
13 slope between benches. The administrative record provided to the Permit Appeals
14 Officer by DTSC shows that the public notice (English and Spanish) of the permit
15 modification request was mailed to the Facility mailing list by CWM on or about January
16 14, 2009. The public notice initiated a 60-day public comment period and a public
17 meeting was held on February 10, 2009. The public notice of the permit modification
18 request was also published in the *Hanford Sentinel*.

19 DTSC issued a draft permit modification approval on June 13, 2013, and issued
20 public notices to the community via the mailing list on July 1, 2013, opening a 60-day
21 comment period. The Notice was also published in the *Hanford Sentinel* on July 2,
22 2013. The Spanish version of the Notice was published in the *Vida en el Valle* on July
23 2, 2013. The Notices stated that the permit modification documents are available at the
24 Kings County Library, Kettleman City Branch, Kings County Library, Avenal Branch, and
25 Kings County Library, Hanford Branch and also on DTSC's website,
26 www.envirostor.dtsc.ca.gov.

1 On August 8, 2013, DTSC mailed a second notice postponing the date for public
2 hearing to September 18, 2013 and extending the comment period to October 25, 2013.
3 The public hearing occurred on September 18, 2013.

4 On May 21, 2014 DTSC gave notice of a permit modification decision in English
5 and Spanish. DTSC released its Response to Comments and approved the permit
6 modification. DTSC in these notices discussed the appeal period and how appeals
7 could be filed. DTSC approved the permit modification to the CWM Kettleman Hills
8 Facility.

9 DTSC prepared an Addendum to the Subsequent Environmental Impact Report
10 for this permit modification request, in compliance with the California Environmental
11 Quality Act (CEQA). DTSC prepared a CEQA Findings of Fact Sheet with Statement of
12 Overriding Considerations, issued in May 2014.

13 **C. PERMIT APPEAL PROCESS**

14 Pursuant to California Code of Regulations, title 22, section 66271.18,
15 subdivision (a), the period specified in the Notice for filing a petition for review of the
16 permit modification decision ended on June 23, 2014. Ms. Ingrid Brostrom, Senior
17 Attorney, Center on Race, Poverty & the Environment, also on behalf of El Pueblo para
18 el Aire y Agua Limpio (Petitioners, or El Pueblo), filed an Appeal (Petition for Review) on
19 June 23, 2014.

20 The permit modification decision was stayed on June 27, 2014, pursuant to
21 California Code of Regulations, title 22, section 66271.14, subdivision (b)(2), until the
22 Permit Appeals Officer completes review of the appeal and determines which, if any, of
23 the issues raised in the appeal meet the criteria set forth in California Code of
24 Regulations, title 22, section 66271.18, for granting review. On June 27, 2014, CWM
25 KHF, the Office of Permitting, and the Petitioner were notified of the stay.
26
27
28

IV. STANDARD OF REVIEW

California Code of Regulations, title 22, section 66271.18, subdivision (a), provides that any person who filed comments, or participated in the public hearing on a draft permit decision, during the public comment period for the draft permit decision, may petition the Department to review any condition of the final permit decision to the extent that the issues raised in the petition for review were also raised during the public comment period for the draft permit decision, including the public hearing. In addition, any person who did not file comments or participate in the public hearing on the draft permit may petition the Department for review of the final permit decision, but only with respect to those changes in the final permit decision from the draft permit decision.

California Code of Regulations, title 22, sections 66271.18, subdivision (a) also provides, in pertinent part, that:

The petition shall include a statement of the reasons supporting that review, including a demonstration that any issues being raised were raised during the public comment period (including any public hearing) to the extent required by these regulations and when appropriate, a showing that the condition in question is based on:

- (1) a finding of fact or conclusion of law which is clearly erroneous, or
- (2) an exercise of discretion or an important policy consideration which the Department should, in its discretion, review

California Code of Regulations, title 22, section 66271.12 specifies the extent to which issues are required to be raised during the public comment period for a draft Permit decision. Specifically, this section states that:

All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Department's tentative decision to deny an application or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position.

1 The Petitioners submitted comments on the draft permit during the public
2 comment period. Therefore, Petitioners have standing to petition for review of any
3 issues raised during the public comment period for the draft permit decision.

4
5 Several issues were raised in the Petition that relate to CEQA. CEQA provides a
6 separate judicial appeal process to resolve disputes concerning compliance with CEQA.
7 The permit appeal process is not the proper forum to raise CEQA issues, as the
8 regulation governing permit appeals provides that petitions for review may request
9 review of permit conditions only. Therefore, any appeals of permit conditions that
10 pertain to CEQA will not be addressed.

11 **V. FINDINGS**

12 The Petition for Review contains sixteen (16) Appeal Comments, identified as
13 Appeal Comments 1 through 16. DTSC responds to the Appeal Comments as they
14 appear in the Petition.

15 **Appeal Comment 1:**

16 DTSC's permit approval violates state and federal civil rights laws. (Pages 3 to 18 of the
17 Petition)

- 18 a. DTSC's approval of the KHF expansion will violate California
19 Government Code section 11135.
- 20 b. DTSC's approval of the KHF expansion will violate California Regulations by
21 perpetuating King County's discrimination.
- 22 c. DTSC's approval of the KHF expansion will violate California regulations by
23 discriminating against Kettleman City residents in permitting the selection of
24 the site of the KHF expansion.
- 25 d. DTSC violations of the California Health & Safety Code have led to pervasive
26 patterns of discriminatory siting statewide.
- 27
- 28

1 e. DTSC's approval of the KHF expansion will violate Title VI of the Civil Rights
2 Act of 1964.

3 f. DTSC's approval of the KHF expansion will violate the Equal Protection
4 Clause.

5 **Response:**

6 This Appeal Comment broadly requests review of General Conditions 2(B) and 3 of the
7 Permit. However, Condition 2(B) does not directly address civil rights issues. To the
8 extent that parts of this Appeal Comment appear to pertain to the CEQA process for this
9 project, CEQA provides a separate judicial appeal process to resolve disputes
10 concerning compliance with CEQA. Pursuant to CCR 66270.41, only permit conditions
11 that are subject to the permit modification are open to review. Because General
12 Condition 2(B) is part of the original permit and not subject to the permit modification, it
13 is not open to review. Therefore, DTSC finds that Petitioner has failed to meet the
14 burden to establish that the Department should grant review of this issue pursuant to
15 the criteria set forth in California Code of Regulations, title 22, section 66271.18,
16 subdivision (a). For this reason, the Department denies the petition for review of this
17 Appeal Comment.

18
19 DTSC takes civil rights matters seriously. However, this appeal process is not the right
20 forum to address civil rights matters. Additionally, as stated in the Response to
21 Comments, these complaints claim a pattern of discrimination based on the siting of
22 hazardous waste facilities, a process over which DTSC does not have control. For
23 these reasons, the Department denies the petition for review of this Appeal Comment.

24
25 **Appeal Comment 2:**

26 DTSC lacks criteria to make permit decisions. (Pages 18 to 20 of the Petition)

27 **Response:**

1 This Appeal Comment broadly requests review of General Condition 2(B) of the Permit.
2 However, Condition 2(B) requires criteria be utilized to make a permit modification
3 decision. DTSC followed the guidelines set forth in the Health and Safety Code and in
4 its regulations for approving a hazardous waste facility permit modification. Pursuant to
5 CCR 66270.41, only permit conditions that are subject to the permit modification are
6 open to review. Because General Condition 2(B) is part of the original permit and not
7 subject to the permit modification, it is not open to review. Therefore, DTSC finds that
8 Petitioner has failed to meet the burden to establish that the Department should grant
9 review of this issue pursuant to the criteria set forth in California Code of Regulations,
10 title 22, section 66271.18, subdivision (a). For this reason, the Department denies the
11 petition for review of this Appeal Comment.

12
13 **Appeal Comment 3:**

14 DTSC's decision violates its Environmental Justice policies. (Pages 20 to 24 of the
15 Petition)

16 a. Precautionary Principle

17 b. DTSC fails to comply with their Environmental Justice Policies cumulative
18 impacts

19 **Response:**

20 This Appeal Comment broadly requests review of General Condition 2(B) of the Permit.
21 However, Condition 2(B) does not refer to nor does it require review of DTSC's
22 environmental justice policies to make a permit modification decision. Pursuant to CCR
23 66270.41, only permit conditions that are subject to the permit modification are open to
24 review. Because General Condition 2(B) is part of the original permit and not subject to
25 the permit modification, it is not open to review. Therefore, DTSC finds that Petitioner
26 has failed to meet the burden to establish that the Department should grant review of
27 this issue pursuant to the criteria set forth in California Code of Regulations, title 22,
28

1 section 66271.18, subdivision (a). For this reason, the Department denies the petition
2 for review of this Appeal Comment.

3
4 In its Response to Comments, DTSC states that it concluded that the facility is not
5 causing health impacts to Kettleman, based on analyzed investigations and studies.
6 DTSC added permit conditions regarding truck age to remedy health impacts and
7 environmental justice concerns. DTSC takes environmental justice matters seriously.
8 However, this appeal process is not the right forum to address environmental justice
9 matters. For this reason, the Department denies the petition for review of this Appeal
10 Comment.

11
12 **Appeal Comment 4:**

13 DTSC should deny the permit based on CWM's compliance history. (Pages 24 to 33 of
14 the Petition)

- 15 a. DTSC should deny the permit based on CWM's Repeating or
16 Recurring Pattern of Violations and Noncompliance, in violation of
17 Health & Safety Code Section 25186.
18 b. DTSC should deny the permit based on CWM's Violations of its Permit
19 c. DTSC failed to adequately consider CWM's Compliance History pursuant to
20 CEQA.
21 d. DTSC did not conduct a comprehensive compliance review.

22 **Response:**

23 This Appeal Comment broadly requests review of General Condition 2(B), 3, and other
24 permit condition not defined of the Permit. To the extent that parts of this Appeal
25 Comment appear to pertain to the CEQA process for this project, CEQA provides a
26 separate judicial appeal process to resolve disputes concerning compliance with CEQA.
27 For other issues, DTSC has exercised its discretion and decided not to revoke CWM's
28 permit. Pursuant to CCR 66270.41, only permit conditions that are subject to the permit

1 modification are open to review. Because General Condition 2(B) is part of the original
2 permit and not subject to the permit modification, it is not open to review. Therefore,
3 DTSC finds that Petitioner has failed to meet the burden to establish that the
4 Department should grant review of this issue pursuant to the criteria set forth in
5 California Code of Regulations, title 22, section 66271.18, subdivision (a). For this
6 reason, the Department denies the petition for review of this Appeal Comment.

7
8 Although Health and Safety Code section 25186 and California Code of Regulations,
9 title 22, section 66270.43 allow for the revocation and denial of permits, neither citation
10 requires the denial of a permit under these circumstances. DTSC carefully reviewed the
11 entire compliance record for the Facility before making this decision. None of the
12 Facility's violations, including the most recent failure to report spills, threatened public
13 health or the environment. CWM has corrected all violations and DTSC's review
14 determined that the Facility is able and willing to take steps to ensure that it operates in
15 full compliance with its permit conditions. For this reason, the Department denies the
16 petition for review of this Appeal Comment.

17
18 **Appeal Comment 5:**

19 The proposed expansion meets other criteria for permit denial. (Pages 33 to 35 of the
20 Petition)

- 21 a. Failure to report spills is akin to misrepresentation of relevant facts.
22 b. Permitted activity would endanger public health and cannot be adequately
23 regulated. DTSC's failed to address the non-attainment status of the San
24 Joaquin Valley Air Basin as it relates to the facility and did not consider the air
25 quality impacts of the addition of 400 trucks per day due to the landfill
26 expansion.

27 **Response:**
28

1 This Appeal Comment broadly requests review of General Condition 2(B) of the Permit.
2 While this Appeal Comment presents concerns regarding Part V. Special Conditions
3 that Apply to All of the Facility's Units, Special Condition 6, Heavy-duty diesel trucks, it
4 does not request a review of said permit condition. The DTSC has decided that this
5 issue does not warrant additional analysis. Pursuant to CCR 66270.41, only permit
6 conditions that are subject to the permit modification are open to review. Because
7 General Condition 2(B) is part of the original permit and not subject to the permit
8 modification, it is not open to review. Therefore, DTSC finds that Petitioner has failed to
9 meet the burden to establish that the Department should grant review of this issue
10 pursuant to the criteria set forth in California Code of Regulations, title 22, section
11 66271.18, subdivision (a). For this reason, the Department denies the petition for
12 review of this Appeal Comment.

13
14 This Appeal Comment asserts that the Facility misrepresented facts related to 72 spills
15 at the Facility such that permit denial would be appropriate. Although Health and Safety
16 Code section 25186 and California Code of Regulations, title 22, section 66270.43 allow
17 for the revocation and denial of permits, DTSC has exercised its discretion and decided
18 that facility spills are not the types of violations they would consider denying this permit
19 request for, as they do not result in a threat to human health or the environment. Neither
20 citation requires the denial of a permit under these circumstances. To the contrary, they
21 allow DTSC to exert its discretion to not exercise such action.

22
23 This Appeal Comment states that the expansion of the KHF would endanger public
24 health and cannot be adequately regulated. The Appeal Comment appears to
25 reference permit condition Part V(6) when it states, as an example, that the use of
26 trucks no older than 2007 would not eliminate pollution from diesel vehicles. However,
27 it does not provide any supporting information as to how it reached this conclusion or
28

1 why it considers this an example of a permit condition that cannot be adequately
2 regulated.

3
4 The diesel emissions reduction, Permit Condition, Part V (6), is not a mitigation
5 measure. This permit condition could reduce NO_x emissions by as much as 165,000
6 pounds per year and PM₁₀ emissions by as much as 7,000 pounds per year in
7 Kettleman City, Avenal and the San Joaquin Valley Air Basin. DTSC considers these to
8 be significant reductions to diesel truck emissions that will occur as a result of this
9 permit condition being placed in effect. For these reasons, the Department denies the
10 Petition for Review of the Appeal Comment.

11 **Appeal Comment 6:**

12 DTSC has insufficient information on Kettleman City health to approve an additional
13 pollution source in the area. (Pages 35 to 37 of the Petition)

14 **Response:**

15 This Appeal Comment broadly requests review of General Condition 2(B) of the Permit.
16 Pursuant to CCR 66270.41, only permit conditions that are subject to the permit
17 modification are open to review. Because General Condition 2(B) is part of the original
18 permit and not subject to the permit modification, it is not open to review. Therefore,
19 DTSC finds that Petitioner has failed to meet the burden to establish that the
20 Department should grant review of this issue pursuant to the criteria set forth in
21 California Code of Regulations, title 22, section 66271.18, subdivision (a). For this
22 reason, the Department denies the petition for review of this Appeal Comment.

23
24 DTSC is not required to conduct a health survey of Kettleman City for the purposes of
25 this permitting process. In its Response to Comments, DTSC notes that it analyzed a
26 wide range of evidence that suggests CWM facility operations have not contributed to
27 health problems in Kettleman City.
28

1 **Appeal Comment 7:**

2 DTSC should not rely upon the flawed birth defect investigation. (Pages 37 to 39 of the
3 Petition)

4 **Response:**

5 This Appeal Comment broadly requests review of General Condition 2(B) of the Permit.
6 Pursuant to CCR 66270.41, only permit conditions that are subject to the permit
7 modification are open to review. Because General Condition 2(B) is part of the original
8 permit and not subject to the permit modification, it is not open to review. Therefore,
9 DTSC finds that Petitioner has failed to meet the burden to establish that the
10 Department should grant review of this issue pursuant to the criteria set forth in
11 California Code of Regulations, title 22, section 66271.18, subdivision (a). For this
12 reason, the Department denies the petition for review of this Appeal Comment.
13

14 In its Response to Comments, DTSC addresses the concerns El Pueblo has with the
15 birth defect study, noting that although the study was inconclusive as to the cause of the
16 birth defects, enough evidence existed to exclude facility emissions as the cause.
17 DTSC also notes the study specifically addressed the potential for dissipation of PCBs,
18 finding that concentrations of the PCBs were unlikely to have changed in the time since
19 the spills occurred and when the study took place.
20

21 **Appeal Comment 8:**

22 DTSC improperly failed to address the need for biomonitoring in Kettleman City.
23 (Pages 39 to 40 of the Petition)

24 **Response:**

25 This Appeal Comment broadly requests review of General Condition 2(B) of the Permit.
26 DTSC declines to grant review on this issue. Pursuant to CCR 66270.41, only permit
27 conditions that are subject to the permit modification are open to review. Because
28 General Condition 2(B) is part of the original permit and not subject to the permit

1 modification, it is not open to review. Therefore, DTSC finds that Petitioner has failed to
2 meet the burden to establish that the Department should grant review of this issue
3 pursuant to the criteria set forth in California Code of Regulations, title 22, section
4 66271.18, subdivision (a). For this reason, the Department denies the petition for review
5 of this Appeal Comment.

6
7 In its Response to Comments, DTSC notes that biomonitoring, although useful, would
8 not address the question of whether any chemicals found could be attributed to the
9 Kettleman Hills Facility. It would not provide new, helpful information and thus was
10 declined.

11
12 **Appeal Comment 9:**

13 DTSC should have prepared a Supplemental or Subsequent EIR, since new Information
14 which was not known and could not have been known at the time of EIR Certification is
15 now available. (Pages 41 to 47 of the Petition)

- 16 a. New EPA standards for Short-Term Nitrogen Dioxide emissions
17 b. Evidence collected during EPA's analysis of the Avenal power plant is
18 significant new information.
19 c. CalEnviroScreen identifies significant new information of the vulnerability of
20 Kettleman City.

21 **Response:**

22 This Appeal Comment broadly requests review of General Condition 3 of the
23 Permit. However, this Appeal Comment pertains to the CEQA process for this project.
24 CEQA provides a separate judicial appeal process to resolve disputes concerning
25 compliance with CEQA. Therefore, DTSC finds that Petitioner has failed to meet the
26 burden to establish that the Department should grant review of this issue pursuant to
27 the criteria set forth in California Code of Regulations, title 22, section 66271.18,
28

1 subdivision (a). For this reason, the Department denies the petition for review of this
2 Appeal Comment.

3
4 **Appeal Comment 10:**

5 Substantial changes in the circumstances under which the project is taken require
6 additional CEQA analysis. (Pages 47 to 56 of the Petition)

- 7 a. The recent Valley Fever epidemic in Kings County is a changed
8 circumstance that may lead to new or more severe impacts from the KHF
9 expansion.
10 b. The Facility receives far fewer than the 400 trucks estimated in the EIR.
11 c. DTSC's Waste Reduction Initiative
12 d. The addition of pollution from related projects

13 **Response:**

14 This Appeal Comment broadly requests review of General Condition 3 of the
15 Permit. However, this Appeal Comment pertains to the CEQA process for this project.
16 CEQA provides a separate judicial appeal process to resolve disputes concerning
17 compliance with CEQA. Therefore, DTSC finds that Petitioner has failed to meet the
18 burden to establish that the Department should grant review of this issue pursuant to
19 the criteria set forth in California Code of Regulations, title 22, section 66271.18,
20 subdivision (a). For this reason, the Department denies the petition for review of this
21 Appeal Comment.

22
23 **Appeal Comment 11:**

24 DTSC proposes to approve changes to the project which will increase the project's
25 impacts, and should therefore prepare a supplemental or subsequent EIR. (Pages 56 to
26 58 of the Petition)

27 **Response:**
28

1 This Appeal Comment broadly requests review of General Condition 3 of the Permit.
2 However, this Appeal Comment appears to pertain to the CEQA process for this project.
3 CEQA provides a separate judicial appeal process to resolve disputes concerning
4 compliance with CEQA. Therefore, DTSC finds that Petitioner has failed to meet the
5 burden to establish that the Department should grant review of this issue pursuant to
6 the criteria set forth in California Code of Regulations, title 22, section 66271.18,
7 subdivision (a). For this reason, the Department denies the petition for review of this
8 Appeal Comment.

9
10 **Appeal Comment 12:**

11 DTSC's CEQA findings are clearly erroneous. (Pages 58 to 61 of the Petition)

- 12 a. DTSC's CEQA findings are based on an improper baseline.
13 b. DTSC's Statement of Overriding Considerations is clearly erroneous and
14 cannot support project approval.

15 **Response:**

16 This Appeal Comment broadly requests review of General Condition 3 of the Permit.
17 However, this Appeal Comment pertains to the CEQA process for this project. CEQA
18 provides a separate judicial appeal process to resolve disputes concerning compliance
19 with CEQA. Therefore, DTSC finds that Petitioner has failed to meet the burden to
20 establish that the Department should grant review of this issue pursuant to the criteria
21 set forth in California Code of Regulations, title 22, section 66271.18, subdivision (a).
22 For this reason, the Department denies the petition for review of this Appeal Comment.

23
24 **Appeal Comment 13:**

25 DTSC fails to analyze impacts from the whole of the project, including related projects,
26 as required by CEQA. (Pages 62 to 63 of the Petition)

27
28 **Response:**

1 This Appeal Comment broadly requests review of General Condition 3 of the Permit.
2 However, this Appeal Comment pertains to the CEQA process for this project. CEQA
3 provides a separate judicial appeal process to resolve disputes concerning compliance
4 with CEQA. Therefore, DTSC finds that Petitioner has failed to meet the burden to
5 establish that the Department should grant review of this issue pursuant to the criteria
6 set forth in California Code of Regulations, title 22, section 66271.18, subdivision (a).
7 For this reason, the Department denies the petition for review of this Appeal Comment.
8

9 **Appeal Comment 14:**

10 DTSC's proposed mitigation analyses should have taken place before project approval,
11 as required by CEQA. DTSC's Mitigation Monitoring and Reporting Plan fails to reduce
12 project impacts to the extent feasible or to less than significant levels. (Pages 63 to 64
13 of the Petition)

14 **Response:**

15 This Appeal Comment broadly requests review of General Condition 3 of the Permit.
16 However, this Appeal Comment appears to pertain to the CEQA process for this project.
17 CEQA provides a separate judicial appeal process to resolve disputes concerning
18 compliance with CEQA. Additionally, these monitoring requirements are not mitigation,
19 as claimed by El Pueblo, and are meant to allow DTSC to gather more information as it
20 tracks facility operations. Therefore, DTSC finds that Petitioner has failed to meet the
21 burden to establish that the Department should grant review of this issue pursuant to
22 the criteria set forth in California Code of Regulations, title 22, section 66271.18,
23 subdivision (a). For this reason, the Department denies the petition for review of this
24 Appeal Comment.
25

26 **Appeal Comment 15:**

27 DTSC's Permit Process Restricts Public Participation. (Pages 65 to 67 of the Petition)
28

- 1 a. DTSC's did not provide an adequate notice period for the Sept. 13, 2013
2 public hearing or provide a long enough period before the close of the public
3 comment period.
4 b. DTSC's CEQA documents were not written in plain language.

5 **Response:**

6 This Appeal Comment broadly requests review of General Conditions 2(B) and 3
7 of the Permit. Public notice and comment is a required and an important portion of the
8 permitting process. DTSC satisfied public notice requirements. Additionally, CEQA
9 provides a separate judicial appeal process to resolve disputes concerning compliance
10 with CEQA Pursuant to CCR 66270.41, only permit conditions that are subject to the
11 permit modification are open to review. Because General Condition 2(B) is part of the
12 original permit and not subject to the permit modification, it is not open to review.
13 Therefore, DTSC finds that Petitioner has failed to meet the burden to establish that the
14 Department should grant review of this issue pursuant to the criteria set forth in
15 California Code of Regulations, title 22, section 66271.18, subdivision (a). For this
16 reason, the Department denies the petition for review of this Appeal Comment.

17 DTSC is required to provide 45 days of public comment period, not 45 days
18 notice of the end of the period as suggested by Appeal Comment. Additionally, notice
19 was given on August 8, 2013 of the public hearing for September 18, 2013, more than
20 30 days prior to the hearing as required.

21
22 **Appeal Comment 16:**

23 DTSC's permit conditions are inadequate to protect public health and the environment.
24 (Pages 67 to 72 of the Petition)

- 25 a. DTSC should decide the location of air monitoring stations, as opposed to
26 CWM.
27 b. DTSC should explicitly prohibit the use of VOC contaminated soils as landfill
28 cover.

- c. DTSC should include a permit condition to address nuisance odors from landfill B-18.
- d. DTSC should include a permit condition to prohibit overloaded trucks from delivering to landfill B-18.
- e. DTSC should PCBs as a prohibited waste at the CWM Kettleman Hills Facility.
- f. DTSC should include a permit condition to prohibit the incineration of waste at the CWM Kettleman Hills Facility.
- g. DTSC should require financial assurances and increased duration of liability from CWM for the Kettleman Hills Facility.

Response:

After careful review, DTSC was unable to find any discussions in either the hearing transcript or as part of its submitted written comments for Appeal Comments 16(e), (f), and (g) as it pertains to extending post-closure care indefinitely. Therefore, DTSC finds that Petitioner has failed to meet the burden to establish that the Department should grant review of this issue pursuant to the criteria set forth in California Code of Regulations, title 22, section 66271.18, subdivision (a).

Appeal Comment 16(a) requests review of General Condition 4(A)(1)(e) and requests that DTSC, not CWM, should select the location of an additional ambient air monitoring station. The general regulatory scheme for hazardous waste facility permits has the Permittee propose an activity for review and approval by DTSC, with specified opportunities for input from interested parties. DTSC will select the air monitoring station location either by approving the initial location proposed by CWM or a subsequent alternative location. The Petitioner has not shown that General Condition 4(A)(1)(e) of the permit is based on a fact or conclusion of law which is clearly erroneous or is an exercise of discretion or an important policy consideration which the Department should review. Appeal Comment 16(b) requests review of Landfill units B-


1 18 and B-19 Unit Specific Condition 5 and requests addition of a permit condition
2 specifically prohibiting the use of contaminated soil as daily cover. Landfill units B-18
3 and B-19 Unit Specific Condition 5 requires application of daily cover soil over exposed
4 wastes to control wind dispersal of particulate matter, which is required by California
5 Code of Regulations, title 22, subsection 66264.301(i). The Petitioner has not shown
6 that Landfill units B-18 and B-19 Unit Specific Condition 5 or DTSC's decision to not add
7 a permit condition specifically prohibiting the use of contaminated soil as daily cover is
8 based on a fact or conclusion of law which is clearly erroneous or is an exercise of
9 discretion or an important policy consideration which the Department should review.
10 Appeal Comments 16(c) and 16(d) broadly request review of Landfill units B-18 and B-
11 19 Unit Specific Conditions to, respectively, add a permit condition to require immediate
12 cover of materials that may cause odors and add a permit condition requiring CWM to
13 turn away any truck that is overloaded. The issue of overloaded trucks is not related to
14 Landfill B-18 and is not part of the Class 3 permit modification final decision. The
15 Petitioner has not shown that Landfill units B-18 and B-19 Unit Specific Conditions or
16 DTSC's decisions to not add permit conditions requiring immediate cover of material
17 that may cause odors or requiring CWM to turn away overloaded trucks are based on a
18 fact or conclusion of law which is clearly erroneous or are an exercise of discretion or an
19 important policy consideration which the Department should review. Appeal Comment
20 16(e) requests review of General Condition 7 and requests that DTSC add PCBs to the
21 list of wastes prohibited at the Kettleman Hills Facility. Prohibition of PCBs would affect
22 operation of permitted units other than Landfill B-18 which are authorized to manage
23 PCBs. Permit conditions associated with the permitted units other than Landfill B-18
24 which are authorized to manage PCBs are not part of the Class 3 permit modification
25 final decision. The Petitioner has not shown that General Condition 7 or DTSC's
26 decision not to prohibit PCBs at the Kettleman Hills Facility is based on a fact or
27 conclusion of law which is clearly erroneous or is an exercise of discretion or an
28 important policy consideration which the Department should review. Appeal Comment

1 16(f) broadly requests review of General Condition 2 and requests addition of a permit
2 condition prohibiting waste incineration at the Kettleman Hills Facility. General
3 Condition 2 broadly describes the effect of permit and the conditions were not modified
4 as part of the Class 3 permit modification final decision. Waste incineration at the
5 Kettleman Hills Facility is not part of the Class 3 permit modification final decision. The
6 Petitioner has not shown that General Condition 2 or DTSC's decision not to add a
7 condition prohibiting incineration at the Kettleman Hills Facility is based on a fact or
8 conclusion of law which is clearly erroneous or is an exercise of discretion or an
9 important policy consideration which the Department should review. Appeal Comment
10 16(g) requests review of General Condition 2(A) and request the addition of conditions
11 to hold CWM liable for future costs of post-closure care indefinitely and to require
12 financial assurance for corrective action. General Condition 2(A) broadly requires the
13 Permittee to comply with California statutes and regulations applicable to construction
14 and operation of the Kettleman Hills Facility. Petitioner has not shown that General
15 Condition 2(A) or DTSC's decision not to add permit conditions to extend liability for
16 post-closure care beyond the 30 years required by regulation or to require financial
17 assurance for corrective action are based on a fact or conclusion of law which is clearly
18 erroneous or are an exercise of discretion or an important policy consideration which
19 the Department should review. This Appeal Comment broadly asserts that permit
20 conditions are inadequate to protect public health and the environment and requests
21 review of the petition based on important policy considerations. However, these policy
22 considerations in the department's discretion do not warrant additional review.
23 Therefore, DTSC finds that Petitioner has failed to meet the burden to establish that the
24 Department should grant review of this issue pursuant to the criteria set forth in
25 California Code of Regulations, title 22, section 66271.18, subdivision (a). For this
26 reason, the Department denies the petition for review of this Appeal Comment.
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28

1 **VI. ORDER**

2 For the reasons set forth above, the Permit Appeals Officer denies the Petition
3 for Review. The stay of the Class 3 Permit Modification Decision is hereby vacated and
4 all provisions of the Class 3 Permit Modification Decision issued by DTSC on May 21,
5 2014 shall be effective upon the issuance date of this Order.
6

7 Dated: 10/13/2014

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10 Barbara J. Cook, P.E.
11 Permit Appeals Officer
12 Department of Toxic Substances Control
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